grantor without determining the question, whether or not the Rule in Shelley's Case is in force in Nebraska.

TRADEMARKS—REGISTRATION.—Petitioner had applied for registration of a trademark containing a merely descriptive phrase, but consisting of non-descriptive and otherwise registerable matter in conjunction therewith. The Commissioner refused to register the mark unless the descriptive phrases were first erased therefrom. *Held,* the ruling was error and the mark should have been registered as filed. *Estate of P. D. Beckwith, Inc.* v. *The Commissioner of Patents* (1920), 40 Sup. Ct. Rep. 414.

The statute provides that no mark consisting "merely" of descriptive words may be registered. Originally the practice of the Patent Office had been to register marks which were otherwise proper, despite the fact that they contained some descriptive words. In *Johnson* v. *Brandau,* 32 App. D. C. 348, the Commissioner had held that "registration of a trademark is permitted where the controlling and distinguishing feature of the mark is an arbitrary symbol, although such symbol may be accompanied by accessories which in themselves are not registerable." The appellate court, however, held the mark not registerable until the applicant should disclaim *and* omit the words objected to. In *Nairn Linoleum Works* v. *Ringwalt Linoleum Works,* 46 App. D. C. 64, application had been made for registration of a mark consisting of a registerable symbol accompanied by the descriptive words, "Ringwalt's Linoleum." The applicant, on requirement by the Commissioner, expressly disclaimed the descriptive words. The appellate court held that such disclaimer was not sufficient; that it would lie hidden in the vaults of the Office, while the mark would go out to the public as though the words and the symbol were both protected; that the objectionable words must be not merely disclaimed but must be omitted from the mark. The principal case rejects this latter proposition and holds that only marks consisting *merely* of descriptive words can be refused registration. It restores the practice of registering otherwise proper marks even though they contain unregisterable parts, at least, if the unregisterable parts are disclaimed by the applicant. There is basis in the opinion, however, for further decisions to limit this practice to cases where the omission of the unregisterable parts would seriously affect the basic character of the whole mark.

SPECIFIC PERFORMANCE—RIGHT OF A QUASI ADOPTED CHILD TO SUE FOR.—When the plaintiff was at the age of six, his guardian and foster parents entered into an oral contract whereby they agreed that they would legally adopt the plaintiff and make him "heir to their property as a son of their own blood." However, adoption papers were never taken out. The plaintiff lived with his foster parents for twenty-four years when his foster father died. The heirs at law of the foster parents claim the estate. The plaintiff sues for specific performance of the contract. *Held,* that the plaintiff was entitled to specific performance, and that part performance would enable equity to take the contract out of the Statute of Frauds. *Evans* v. *Kelly, et al,* (Neb., 1920), 178 N. W. 630.

Adoption is solely the creature of statutes, and hence, if the provisions of the statute are not strictly complied with, the legal status of the child remains unchanged. PECK, DOMESTIC RELATIONS, § 106; *Woodward's Appeal,* 81 Conn. 152, 165. A mere oral contract to adopt will not, of itself, give the quasi-adopted child the right to inherit from its foster parents. *Grantham* v. *Gossett,* 182 Mo. 651. However, the modern tendency seems to be that, where there is a clear and unambiguous provision that the child shall inherit, equity will give effect to the contract in favor of the foster child. *Wright* v. *Wright,* 99 Mich. 170; *Chehak* v. *Battles,* 133 Iowa 107. Such contracts are taken out of the Statute of Frauds on the ground of the part performance on the part of the child in rendering service to his foster parents. *Wright* v. *Wright, supra; Van Dyne* v. *Vreeland,* 12 N. J. E. 142, 150. As to the rights generally of legally adopted children, see, 18 MICH. L. REV. 542.

TRESPASS—CONTINUING—LIMITATION OF ACTIONS.—Plaintiffs owned a tract of land fronting on a public street. More than six years before this action was commenced, the county, in order to straighten the street, entered and took possession of a strip of the plaintiff's land, filled it in to make it correspond to the grade of the highway, and turned it over to public use. Defendant did not try to justify its act, but relied on the Statute of Limitations as its only defense. *Held,* the instrucion of the court, that the statute was no bar because the trespass was a continuous one, was correct. *Morey* v. *Essex County* (N. J., 1920), 110 Atl. 905.

This decision is in line with the prevailing authority in holding that an obstruction placed wrongfully upon another's land is a continuing trespass as long as it remains there. *Pappenhiem* v. *The Met. El. Ry. Co.,* 128 N. Y. 436; *Milton* v. *Puffer,* 207 Mass. 416; *Holmes* v. *Wilson,* 37 E. C. L. 273. It throws no light, however, upon the untenable distinction, recognized by most courts, between a hole and an obstruction. *Kansas Pac. Ry.* v. *Mihlman,* 17 Kan. 224; *Nat. Copper Co.* v. *Minn. Mining Co.,* 57 Mich. 83. See also the note on "Continuous Trespass," 18 MICH. L. REV. 679. The Court does not even intimate what its decision would have been had this been a ditch or a hole instead of an obstruction.

TRIAL—SWEARING THE JURY AFTER THE EVIDENCE IS IN.—The defendant was indicted for murder. On the trial the jurors were sworn on their *voir dire,* and after twelve jurors were found to be qualified they were accepted by both the defendant and the state. Immediately thereafter the evidence was put in and both sides rested. It was then discovered and made known for the first time that the jury had not been sworn to try the case. Over the defendant's objection the jury was at once sworn to well and truly try the case and a true verdict give, the arguments of counsel were made, and the case was submitted to the jury, who returned a verdict of guilty. Error was assigned on the ground that the defendant had been denied a jury trial because the jury was not under oath when the evidence was presented. *Held,* (two judges dissenting), that the defendant had been denied a jury trial. *Miller* v. *State* (Miss., 1920), 84 So. 161.